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9
10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF DELAWARE**
12

13 In re:

14 W.R. GRACE & CO., et al.,

15 Debtors.

Chapter 11

Case No. 01-1139 (JKF)
Jointly Administered

16 **MARICOPA COUNTY'S RESPONSE TO MOTION FOR ENTRY OF AN ORDER**
17 **DECLARING AS VOID AB INITIO ANY AND ALL ACTIONS TAKEN BY**
18 **MARICOPA COUNTY, ARIZONA, FIRST LIBERTY NATIONAL BANK AND**
19 **MARICOPA COUNTY SUPERIOR COURT WITH RESPECT TO DEBTOR'S**
20 **REAL PROPERTY IN MARICOPA COUNTY**

21 Maricopa County, by and through its attorney undersigned, responds to the motion
22 filed by debtor regarding a tax lien sale of real estate taxes owed by debtor in Maricopa
23 County, Arizona.

24 The debtor has requested damages against Maricopa County for a willful violation of
25 the automatic stay. In response, Maricopa County did not willfully violate the automatic
26 stay in the within matter. Any violation of the stay was unintentional.

27 First, the property at issue herein, parcel #165-02-065B, was never in the name of the
28 debtor until 2007 and in 2008 it returned to the name of the former owner, Ari-Zonolite, as
evidenced by Exhibit 1 attached hereto and by this reference made a part hereof.

1 When a bankruptcy is filed and notice is given to Maricopa County, the only way of
2 determining outstanding taxes due by the debtor is by name unless the parcel number of the
3 real estate owned by debtor is supplied. If the property is not in the name of the debtor,
4 Maricopa County would have no way of determining ownership. The debtor has provided a
5 copy of a deed executed from Ari Zonolite to W. R. Grace, however, that deed was never
6 recorded in Maricopa County so no change of ownership was available to the Maricopa
7 County Treasurer.

8 *A.R.S. Sec. 33-411* provides for the recording of documents in Arizona. Section A.
9 of said statute recites that “no instrument affecting real property gives notice of its contents
10 to subsequent purchasers or encumbrance holders for valuable consideration without notice,
11 unless recorded as provided by law in the office of the county recorder of the county in
12 which the property is located”. The failure of the debtor to record the deed from Ari-
13 Zonolite to W. R. Grace contributed to the issues involved in this matter. If the deed had
14 been recorded, there would, in all likelihood, never have been an issue as to the tax lien sale
15 and the subsequent foreclosure. The debtor must have been aware that real estate taxes were
16 due on the real property located in Arizona and also must have been aware that no tax claim
17 was filed by Maricopa County. Tax claims are filed by the Maricopa County Treasurer in
18 all bankruptcy cases when notices are received affecting property that it can identify.
19 However, if the real property belonging to the debtor is not in the name of the debtor, proper
20 notice of ownership for notice purposes is not received. In the within case, while Maricopa
21 County received the initial notice of the bankruptcy, it was unable to locate property in the
22 name of the debtor and did not file a claim herein. The sale of the tax lien was not
23 intentional.
24

25 Debtor alleges taxes were paid by debtor in this matter. However, payment of taxes
26 and tax bills having been sent to an address different than the listed owner does not give the
27 Maricopa County Treasurer notice of change of owner. Taxes are paid by title companies,
28

1 mortgage companies, and various other entities that are not owners of the property,
2 therefore, payments by debtor on said property would not be an indication of ownership
3 unless the change of ownership deed was recorded in Maricopa County. The recorded
4 documents are reviewed by the Maricopa County Assessor's Office and the Maricopa
5 County Treasurer changes its records of ownership from the County Assessor's records. In
6 this case, no deed was recorded so ownership records were not changed by the Maricopa
7 County Treasurer's Office.

8
9 It is not disputed that the debtor sent a notice of bankruptcy, however, as hereinabove
10 set forth, if the real property of the debtor is not in the debtor's name, no claim would have
11 been filed because no tax information would have been found. The documents attached to
12 debtor's motion indicate that information was obtained by the debtor that the property had
13 been flagged. It is the usual procedure that the properties that are in bankruptcy and that the
14 Treasurer's Office is aware are in bankruptcy are flagged. This is not a statutory obligation
15 for the Treasurer, but a method of trying to insure that no tax lien sales or other action is
16 taken on properties involved in bankruptcy.

17 In this case, a Notice of Lis Pendens had been filed and possibly that would have
18 been the reason that the debtor, or debtor's representative, was advised that the property was
19 in litigation.

20 The undersigned is unable to respond to the allegations regarding contact with First
21 Liberty Bank and its' counsel because Maricopa County was not a party to those
22 conversations or correspondence.

23 The debtors have requested punitive damages against Maricopa County. There is an
24 Arizona statute, as well as Federal statutes, that preclude punitive damages against the
25 government, states and municipalities. Several cases have addressed this issue. In *Mitchell*
26 *v. Dupnik*, 75 F3d 517 (9th Cir. 1996), the Court held that although a municipality could be
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1 liable for compensatory damages, it is immune from punitive damages. See also *City of*
2 *Newport v. Fact Concerts, Inc.* 453 U.S. 2247 (S. Ct. 1981).

3 In *Baker v. Runyon*, 114 F3d 668 (7th Cir. 1997), the Court held that punitive
4 damages when awarded against governmental entities do not serve their intended deterrent
5 purpose. Awarding punitive damages against a governmental agency punishes only the
6 taxpayers and the Court reversed the trial court regarding punitive damages.

7 Punitive damages against governmental agencies including states, counties and cities
8 have been addressed in other cases. In *Shore v. County of Mohave, State of Arizona*, 644
9 *F2d 1320* (9th Cir. 1981), the Court held in reversing punitive damages that the state cannot
10 be held liable for punitive damages in the absence of specific statutory authorization for a
11 punitive damage award. The Court further held that the reasons for not allowing awards of
12 punitive damages against the State also apply to Counties.

13 Finally, in *Dunleavy v. County of Delaware*, 279 F3d 219 (3rd Cir. 2002), the Court
14 held that unless Congress clearly provides otherwise, local governmental entities are
15 immune from punitive damage awards. The Court stated that in order to subject
16 municipalities to punitive damages, a statute must expressly provide for such an award
17 against a municipality. Here, as in those cases, there is no specific statutory authority for a
18 punitive damage award and therefore that portion of the Motion filed by the debtor should
19 be dismissed. Arizona has a statute prohibiting an award of punitive or exemplary damages
20 against a public entity or employee. *A.R.S. Sec. 12-840.04* provides that neither a public
21 entity nor public employee acting within the scope of employment is liable for punitive or
22 exemplary damages.

23 No damage has been caused to the debtor herein by the sale of the tax lien and
24 subsequent foreclosure, because no further transactions regarding said real property have
25 been taken by the tax lien purchaser, First Liberty Bank. The real property has not
26 physically been transferred, the operation of business by debtor has not been interrupted or
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1 impeded and the tax lien sale result can be resolved. The debtor has asked for compensatory
2 damages but has recited no specific damages that would result in compensatory damages
3 and punitive damages. This is especially true in view of the fact that Maricopa County is
4 willing to take any necessary action to remedy the unintentional tax lien sale.

5 The debtor has not requested damages against the tax lien purchaser, First Liberty
6 Bank, even though it appears that actual notice was given to First Liberty Bank prior to the
7 completion of the foreclosure action according to the exhibits attached to debtors' motion.

8 It is respectfully requested that the Court deny the debtors request for compensatory
9 and punitive damages against Maricopa County and permit Maricopa County to take the
10 necessary action to remedy the unintentional tax lien sale and restore the title of the real
11 property relating to Parcel #107-02-065B to the debtor.

12 DATED this 19 day of December, 2008.

13
14 AIKEN SCHENK HAWKINS & RICCIARDI P.C.

15 BY 

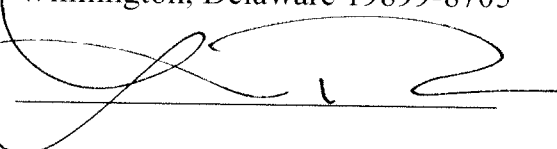
16 Barbara Lee Caldwell
17 4742 North 24th Street
Suite 100

18 Phoenix, Arizona 85016

Attorneys for Maricopa County
Treasurer

19 COPY of the foregoing mailed
20 this 19 day of December, 2008, to:

21 David M. Bernick, P.C.
22 Janet S. Baer
KIRKLAND & ELLIS LLP
200 East Randolph Drive
Chicago, IL 60601

23 Laura Davis Jones
24 James E. O'Neill
PACHULSKI STANG ZIEHL & JONES LLP
25 P.O. Box 8705
26 Wilmington, Delaware 19899-8705
27 
28

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Charles "Hos" Hoskins
MARICOPA COUNTY
TREASURER
 301 W JEFFERSON ST -- Room 100
 PHOENIX, AZ 85003-2199

Sign up for

Parcel Watchand receive tax bill
notifications via emailwww.treasurer.maricopa.gov**PARCEL/ACCOUNT # 107-02-065B 2**

Verify the property description on the back of this statement to make
 certain you are paying on the correct parcel. The Treasurer's Office is not
 responsible for payments to incorrect parcels.

www.treasurer.maricopa.gov
 (602) 506-8511


 2171 2841 *****AUTO**MIXED AADC 852
 ARI-ZONOLITE CO
 TERRY PUGLISI
 7500 GRACE DR
 COLUMBIA, MD 21044-4009

**MARICOPA COUNTY
2008 PROPERTY TAX
STATEMENT**

So we can provide you with
 more of the information you
 want regarding your property
 taxes...

**Tax information
 is now on the
 other side**



Your 2008 Property Tax Summary for Parcel # 107-02-065B 2

(627713=PRTCNTL)

Limited Value (Primary)	2007 908,731	Ratio .240	Assessed 218,097	2008 1,054,771	Ratio .230	Assessed 242,599
Full Cash Value (Secondary)	992,265	.240	238,146	1,188,304	.230	268,711
Total Delinquent Taxes Now Due						\$11,943.39
Total 2008 Assessed Taxes						\$27,153.34

Definitions

Primary Limited Value..... Legislatively established value based on a
 mathematical formula that limits the valuation
 increase in any given year.
 PRI..... Taxes on Limited Value for the maintenance and
 operation of State, County, Cities, School Districts
 and Community College Districts.
 Full Cash Value Assessor's estimate of true market value.
 SEC..... Taxes on Full Cash Value, but used to fund bonds,
 overrides, and certain special districts.
 Special Districts Limited purpose taxing districts such as Flood
 Control, Fire, Irrigation, etc.
 School Bonds..... Voter approved borrowing for education.
 Overrides..... Permission to exceed spending limitations.
 State Aid Primary property tax credit for owner-occupied
 homes. The amount is reimbursed to School Districts
 from the State.

**Find the answers to FAQ
 (Frequently Asked Questions)
 at www.treasurer.maricopa.gov**

Payments**First half tax is due 10/1/08.** Interest penalty after 5pm on 11/3/08.**Second half tax is due 3/1/09.** Interest penalty after 5pm on 5/1/09.For tax amounts more than \$100, if the entire amount is paid in full by 12/31/08,
no interest is charged.

Full year taxes of \$100 or less must be paid in full by 11/3/08.

Interest on late payments is 16% per year (ARS § 42-18053).

Pay with E-Check: Contact your bank or visit our web site. No service fees
when paid using the Treasurer's Office website.**Pay by credit card:** Third-party service fees apply. Visit our web site.**Pay by check:** Mailed payments must be postmarked on or before the due date.
Your cancelled check is your receipt. Legal payment exists when the check has
cleared your bank. A \$25 fee will be assessed for returned checks. Use enclosed
envelope and payment coupon and write your parcel number on your check.
U.S. funds only.**Pay in person:** Current year taxes can be paid in person, using check or cash,
at any Bank of America branch in Arizona.**EXHIBIT 1**

THE TOTAL AMOUNT DUE IS REFLECTED ON THE PAYMENT COUPON BELOW.

DETACH AND RETURN WITH PAYMENT

Maricopa County Treasurer
P O Box 52133
Phoenix, AZ 85072-2133

TOTAL	\$ 39,096.73
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**PAYMENT MUST BE MADE BY
CASHIER'S CHECK OR MONEY ORDER.**